

11/2/80  
STATE OF MAINE

NOT TO BE PUBLISHED IN THE MAINE REPORTER

SUPREME JUDICIAL COURT  
DOCKET NOS. 53.13 &  
53.14

IN RE: LAWRENCE P. MAJONEY }

ORDER

STATE OF MAINE  
CLERK OF THE COURT

NOV 12 1980

RECEIVED AND FILED

By order of the Chief Justice, the above two matters were consolidated for hearing and both were assigned to the undersigned Justice for disposition.

Hearing was held in Portland on October 20, 1980. The respondent elected to proceed without counsel.

At the conclusion of the hearing, Bar Counsel and respondent requested an opportunity to submit statements of their respective position. Despite the fact that both had argued orally, and the respondent had moved orally for a judgement dismissing both counts in the Information, these requests were granted, the Court allowing one week in which arguments were to be filed. Bar Counsel did so; the respondent did not file any statement.

Docket No. 53.13 contained four (4) counts. Bar Counsel proceeded only on Count one (1), and offered no evidence on Counts two, three or four. He represented to the Court that he would go forward only on Count one, thus, in effect, dismissing the remaining three counts.

Since the respondent's answer denied the critical elements of these latter three counts, the facts alleged therein cannot be taken as admitted, and, since Bar Counsel has the burden of proving these allegations and has not done so, the respondent must be exonerated from the charges therein contained. See, Rule 7(e)(6)(B)&(C) Maine Bar Rules.

DOCKET NO. 53.13

The issue here is whether Bar Counsel has established by a preponderance of the evidence that the respondent violated Maine Bar Rules 3.2 (f)(2) and (3) in

the manner alleged in either paragraph 11 or 12 of the Information. Paragraph 11 alleges a violation of the Rules through the medium of misappropriation of a client's fund.

On January 1, 1980 the respondent had a bank checking account in which clients' monies were deposited pending distribution. On that day the balance was \$34.93, although the respondent's check book stub indicated the balance to be \$36.25. On January 3, 1980 a deposit was made in the sum of \$35,000 which had resulted from a previous settlement of a workers compensation case. On March 31, 1980 the balance was \$25.25. In the interim period the client, for whose benefit the \$35,000 had been received, was paid either directly or for his benefit a portion of that sum. At some point subsequent to March 31, 1980 the respondent's client finally was paid the balance of the \$35,000 settlement.

During the process of disbursing the \$35,000, the respondent had written several checks on his account when he knew that the client's fund had been utilized for some other purpose. For example, an audit of this account indicates nineteen (19) times that checks had been written for purposes unrelated to his client's case.

Although there was testimony that the respondent still was representing this client, there was no proof that the client ever authorized the respondent to expend the funds for unrelated matters. The respondent had been awarded counsel fees in addition to the \$35,000 paid to settle the compensation claim.

Paragraph 12 is premised on checks having been written against an account in which there were insufficient funds on deposit. The proof was undisputed that, although the checks were ultimately paid, two checks were written which were returned for insufficient funds.

On or about February 8, 1980 respondent wrote a check to Peavey Manufacturing Co. in part payment for a truck being purchased by the client for whom the compensation case had been settled. The check was for \$15,500 and, after deposit, was returned for insufficient funds. It was not until legal proceedings were instituted that the check was finally made good, which was in August, 1980.

Again, in February, 1980, respondent's client purchased a "skidder" from Peabody Equipment Co. and paid for it by delivery of a certified check for \$5,000 and a check written by the respondent for \$5,815. This latter check "did not clear" when deposited and, being told by respondent to redeposit the same, the company's sales manager did so but the check "bounced". Legal action was started and, in August, 1980, the respondent finally paid the check. The \$5,815 check was thought by respondent's client to be drawn against his funds which he believed to be then in the hands of the respondent.

Both of these checks were refused payment by the drawee for lack of funds and both had been presented for payment within a reasonable time after their issuance. For example, the check to Peabody Equipment Co. was dated "2/8/80" and the memo of the drawee's bank debiting the Peabody Equipment Co. account for "NSF" was dated "2/29/80", obviously making the presentment for payment well within "30 days after date or issue whichever is later." 11 M.R.S.A. §3-502 (2)(a). Likewise, the \$15,500 check was dated "2/6/80" and dishonored within less than 30 days.

The respondent testified that he knew these checks were drawn with insufficient funds on deposit to pay them on presentation.

17-A M.R.S.A. §708(1) provides:

"A person is guilty of negotiating a worthless instrument if he intentionally issues ... a negotiable instrument knowing that it will not be honored by the ... drawee." (Emphasis supplied)

The testimony satisfies this Court not only by a fair preponderance, but beyond any doubt that the respondent's conduct amounted to a misappropriation of a great portion of the \$35,000 he had received for the benefit of his client. By writing two worthless checks - even if both were ultimately made good some six months later - the respondent engaged not only in "illegal conduct involving moral turpitude" but also "in conduct involving dishonesty ... or misrepresentation."

This information alleges a misappropriation of clients funds and the resultant violation of Maine Bar Rules, 3.2(F)(2) and (3).

Respondent represented to this Court that he had been indicted by the Cumberland County Grand Jury, which indictment was premised on the same facts which Bar Counsel would present in support of this Information. He was supported in this assertion by the attorney who had been retained to represent him on the criminal charges. Respondent asked for a continuance to avoid what he deemed would be prejudice to his defense, both here and in the Superior Court. In short, if he testified here his Fifth Amendment rights could not be invoked when the criminal trial ensues. Thus, he continues, he does not wish to testify here and that failure may well prejudice his right to a fair trial on the Information. He concludes that the dilemma he finds himself faced with would be eliminated if the hearing was continued. Bar Counsel would not agree to the motion.

This Court denied respondent's motion feeling constrained to do so because of its belief that neither the Constitution of the United States or of the State of Maine required a stay of this Information pending resolution of the criminal matter. See, *Arthurs vs. Stern*, 1st Cir., 1977, 560 F2d 477.

The facts here are not complicated. The respondent was attorney for a young lady who was injured in a motor vehicle accident. In November, 1979, after some negotiation, the client's case then pending in York County was settled by counsel for \$18,000. Attorneys' fee was one-third, the case having been initiated by another attorney and joined later by the respondent as co-counsel.

Respondent was authorized to settle by his client, who was then out of Maine. Respondent presented opposing counsel with a release on which was a signature purported to be that of his client, and on which was the signature of the respondent, witnessing the signature, and also taking the client's acknowledgment as an "Attorney at Law." The release was dated November 10, 1979. When the release was presented to opposing counsel and a docket entry made dismissing the

action, an insurance company draft dated "11/7/79" and payable jointly to the client and respondent in the sum of \$18,000 was delivered to respondent. Although the client denied having endorsed the draft, it did bear what purported to be her signature and that of the respondent. It apparently was deposited in the Canal National Bank in Portland on November 13, 1979 and was routinely cleared through the Federal Reserve Bank in Boston.

In January, 1980, the forwarding attorney received his share of the attorney's fee and heard nothing further until some time in July, 1980 when he discovered that the client had received nothing from the settlement. The respondent was contacted and, on probably July 25, 1980, he gave the forwarding attorney a cashier's check for \$6,000 payable to the client. At that time respondent agreed to remit the balance but, to this day, has not done so.

Respondent's client was a witness. She testified, and this Court believes her testimony summarized herein. She testified she was aware of, and consented to the \$18,000 settlement. She denied her signature on either the release or draft. She was not in Maine when the settlement was actually consummated, nor was she here in the ensuing winter and spring. During this time, she made periodic calls to the respondent "every few weeks" but it was not until late in July, 1980 that she knew the settlement had actually been consummated. In the interim the respondent gave her a variety of misinformation about the status of the case such as: 1, the other side was not willing to settle for \$18,000, or 2, defendant's counsel did not have authority to settle for \$18,000, or 3, the Court calendar was crowded, or, 4, no judge was available to order opposing counsel to stand by the \$18,000 settlement.

It is true that client owed medical bills and that respondent had been authorized to attempt to settle them and, if possibly, do so on some reduced percentage. These bills totaled approximately \$5,000. If they were paid in full the client would have \$1,000 left. As far as the testimony here is concerned, there was no proof that any medical bills had been paid or that the respondent had the money

with which to do so. However, it had been agreed between respondent and the forwarding attorney that the balance of \$6,000 was to be delivered to the forwarding attorney who would proceed to pay the medical bills. This has never been done.

Whether respondent has actually appropriated any of the settlement receipts beyond counsel fees to his own use was not definitively established by specific proof. The passage of at least seven months between the receipt of the \$18,000 by the respondent and the \$6,000 payment to his client, and the subsequent failure to pay forwarding counsel the remaining \$6,000, combined with the evasive statements to the client, lead this Court inevitably to the conclusion that there has been proof, at least by a preponderance of the evidence, of misappropriation. The Court views the respondent's conduct as above described as involving moral turpitude, dishonesty and a deliberate misrepresentation of facts to his client.

#### CONCLUSION

This Court is satisfied that the allegations in both Informations have been established factually by a preponderance of the evidence. Therefore, the respondent must be found guilty of the charges in Docket No. 53.13, Count One; as previously indicated he must be found not guilty of those charges alleged in Counts Two, Three and Four in Docket No. 53.13. The Court also finds respondent guilty of the charges alleged in Docket No. 53.14.

Respondent, in oral argument, urged the Court to defer judgement in Docket No. 53.14 to prevent possible prejudice in the forth-coming criminal trial. This Court, weighing in the balance this suggestion of possible prejudice against both the public interest in prompt discipline of errant attorneys and the duty of the Court to protect the public from such practitioners, finds the scales tipped in favor of immediate disposition.

The Clerk of the Supreme Judicial Court will forthwith record the guilty judgements on his docket including the imposition of penalty as hereinafter delineated.

## PENALTY

Rule 7(e)(6)(D), Maine Bar Rules, gives the Court a wide latitude in dealing with an attorney found guilty in a disciplinary action.

The Rule allows the Court to "impose an admonition, a reprimand, public censure, suspension or disbarment." Considering the gravity of the conduct of the respondent, the Court considered only suspension and disbarment as viable options.

This Court is, of course, personally aware of the respondent's long practice before the Courts of this State, a practice that extended well beyond the confines of Cumberland and York Counties, and dealt with a variety of legal problems involving, at times, considerable sums of money. In short, the respondent is an experienced attorney and well known as such both by the legal fraternity and the general public. His status as an attorney at law is a public representation that the Supreme Judicial Court of Maine deems him to have those attributes of good moral character that entitle him to practice law. The public, and his fellow lawyers, may properly assume that he will deal with them honestly and with fidelity, candor and fairness.

This Court is not insensitive to the fact that, to an attorney, disbarment is the ultimate professional sanction. Disbarment may prove to be the end of one's professional life. Thus, the burden of deciding the appropriate penalty is not lightly assumed.

This Court has read many decisions from other jurisdictions dealing with misappropriation of client's funds by an attorney. The following are illustrative: Matter of Wilson, 1979, 81 N. J. 451; 408 A2d.1153; Weems vs. Supreme Ct. Committee on Prof. Conduct, Ark. 1975, 523 S.W. 2d. 900; The Florida Bar, Fla. 1975, 322 So. 2d. 498; Toledo Bar Association vs. Ishler, 1974, 39 Ohio St. 2d. 33; 313 N.E. 2d. 818; In Re Snitoff, 1972, 53 Ill. 2d. 50; 289 N.E. 2d 428; In Re Underwood, Ind. 1972, 286 N.E. 2d 828; State vs. Barrett, 1971, 207 Kan. 178; 483 P. 2d. 1106; Demain vs. State Bar, 1970, 90 Cal. Rptr 420; 475 P2d 652. These cases point to the seriousness with which Courts across the country have viewed mis-

appropriation of clients' funds by an attorney characterizing such conduct in various ways. Typical is the language found in Sturr vs. State Bar, 1959, 52 Cal. 2d 125, , 338 P.2d 897, 902, namely:

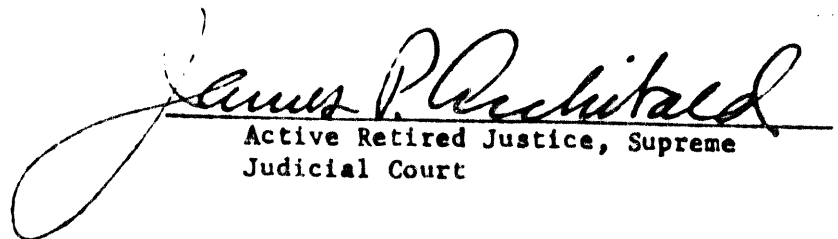
Misappropriation of funds entrusted to an attorney at law is a gross violation of general morality as well as professional ethics and, in addition, is likely to endanger the confidence of the public in the legal profession. It deserves severe punishment.

What consideration should be given when restitution has been made? It is recalled that in Docket No. 53.13, restitution was finally made but only after two actions were instituted on the worthless checks. In Docket No. 53.14 partial restitution resulted only when the forwarding attorney made a demand, and the respondent still retains approximately \$6,000 of his client's funds. This Court feels, under those circumstances, that what restitution as has been accomplished is of minimal significance, since it was made as a matter of expediency and under pressure. See, Resmer vs. State Bar of California, Cal 1960, 349 P.2d. 67, 72.

Bearing all of the foregoing facts and concepts in mind, this Court has reluctantly but firmly concluded that disbarment is the appropriate sanction.

WHEREFORE, it is ORDERED and ADJUDGED as follows: Respondent attorney Lawrence P. Mahoney be, and he is hereby, disbarred from the practice of law in the State of Maine, his name to be forthwith stricken from the roll of attorneys.

November 10, 1980

  
Active Retired Justice, Supreme  
Judicial Court

STATE OF MAINE  
CLERK OF THE COURT

NOV 12 1980

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